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No. 96-1830

IN THE
Supreme Court of the United States
OCTOBER TERM, 1996

TRACTOR SUPPLY COMPANY, INC.,
Petitioner,
v.
VINCENT L. PRYNER,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

RESPONDENT'S SUPPLEMENTAL BRIEF IN OPPOSITION

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Pursuant to Court Rule 15.8, Respondent Vincent L. Pryner files this supplemental brief to submit an appellate decision directly on point that was decided July 21, 1997, after Respondent filed his last brief in this Court.

In *Brisentine v. Stone Webster Engineering Corp.*, 117 F.3d 519 (11th Cir. 1997), the Eleventh Circuit held, in a case of first impression in that circuit, that an arbitration clause in a collective bargaining agreement between an employer and a labor union cannot supplant the right

of an individual employee to pursue his or her statutory anti-discrimination claims in court. *Id.* at 526. The Eleventh Circuit reasoned that this Court's decision in *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20 (1991), concerning enforcement of arbitration clauses in individual employment contracts, did not disturb the holding of *Alexander v. Gardner-Denver*, 415 U.S. 36 (1974) establishing a separate rule in the collective bargaining context. 117 F.3d at 524-25. In so holding, the Eleventh Circuit joins every circuit to have considered the issue other than the Fourth Circuit, which stands alone in holding to the contrary. *Compare Austin v. Owens-Brockway*, 78 F.3d 875 (4th Cir.), *cert. denied*, —— U.S. ——, 117 S.Ct. 432 (1996) *with Tran v. Tran*, 54 F.3d 115 (2d Cir. 1995); *Pryner v. Tractor Supply Co.*, 109 F.3d 354 (7th Cir. 1997); *Varner v. National Super Markets, Inc.*, 94 F.3d 1209 (8th Cir. 1996), *cert. denied sub nom., National Supermarkets, Inc. v. Varner*, —— U.S. ——, 117 S.Ct. 946 (1997); *Harrison v. Eddy Potash, Inc.*, 112 F.3d 1437 (10th Cir. 1997).

The Fourth Circuit's view is thus even more isolated than it was at the time the Brief in Opposition was filed. *See* Brief in Opposition at 11-13. And *Austin*, which involved an unusual collective bargaining agreement, remains confined to its unique facts. Brief in Opposition at 12-13.

Brisentine therefore confirms that the appellate courts have ample guidance from this Court's decisions in *Gardner-Denver, Gilmer* and subsequent cases to resolve these issues in the typical collective bargaining context, and there is no need to grant plenary review.

CONCLUSION

For the foregoing reasons and the reasons set forth in the Brief in Opposition, Tractor's petition for a writ of certiorari should be denied.

Respectfully submitted,

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September 8, 1997